Mountaineer Bolt, Inc. *and* United Mine Workers of America, Petitioner. Case 6–RC–10378

October 31, 1990

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND OVIATT

On March 9, 1990, the Employer filed timely objections regarding an election held on March 2, 1990. On March 22, 1990, after investigating the Employer's election objections, the Regional Director issued an order directing hearing on the issue of whether new employees had been threatened by the Union with loss of their jobs if the Union did not win the election. On March 30, 1990, the Employer filed supplemental objections alleging that after the election the Union continued to threaten new employees to intimidate them and prevent them from testifying at the hearing. By letter dated April 2, 1990, the Regional Director rejected the supplemental objections as untimely under Section 102.69(a) of the Board's Rules and Regulations, which requires objections to be filed within 7 days after the tally of ballots has been prepared. Although rejecting the supplemental objections, the Regional Director, in his letter to the Employer, stated:

> I would note that the issues you have raised as Supplemental Objections to the Election are matters that may be properly explored at the postelection hearing in order to establish the credibility of such witnesses as may be called by either party to testify. In addition, the allegations may well be the basis for the filing of an unfair labor practice charge.

On April 16, 1990, the Employer filed a request for review of the Regional Director's rejection of the supplemental objections. In its request for review, the Employer argues that the Union's postelection threats are related to its preelection threats and jeopardize the holding of a fair hearing.

The National Labor Relations Board, by a three-member panel, has reviewed the record in light of the request for review and adopts the Regional Director's ruling.

We find the Regional Director's rejection of the Employer's supplemental objections squarely supported by Board precedent. In *Head Ski Co.*, 192 NLRB 217 (1971), the Board reversed a Regional Director's recommendation that a hearing be held on an allegation that one employee threatened two others with physical harm if they crossed the picket line, should the union win the election and call a strike. The hearing was to include evidence concerning the employer's allegation that the union had adopted these threats by engaging in violence during a strike that began 6 weeks after the election. In overruling the recommendation for a hearing, the Board stated at 218:

> It is axiomatic that the Board, in considering objections to an election, looks only to evidence of conduct which occurred between the time the petition is filed and the election is held. Accordingly, there is no basis here for considering evidence of alleged misconduct which occurred some 6 weeks or more after the election to determine whether the preelection atmosphere was fraught with fear and coercion. Those incidents could have no impact on the votes cast by the employees and cannot show an effect on the election atmosphere. [Fn. omitted.]

Similarly, in the present case, the threats alleged in the supplemental objections could not have affected the election because they were alleged to have occurred after the election. Thus, the Regional Director's rejection of the supplemental objections was proper.

That the alleged postelection threats are not a basis for objections does not mean that no mention of them may be made at the hearing. Indeed, the Regional Director specifically stated that they may be explored as they relate to the credibility of witnesses at the hearing. Thus, we agree with our dissenting colleague that the alleged postelection conduct might bear on the weight to be given to the testimony of the Employer's witnesses at the hearing on objections. Our disagreement concerns only his apparent view that the alleged postelection conduct itself may properly be considered to be objectionable conduct that, if proven, would warrant setting aside the election.[1]

Our dissenting colleague also argues that the alleged postelection conduct might warrant withholding certification from the Union. The alleged threats of job loss here, however, are far removed from the type of conduct that the Board has held warrants withholding certification from a union as the exclusive representative of a bargaining unit. Cf. *Teamsters Local 703 (Kennicott Bros.)*, 284 NLRB 1125 (1987); *Laura Modes Co.*, 144 NLRB 1592 (1963). Accordingly, contrary to our dissenting colleague, we find no basis for granting the Employer's request for review.

[1] While our dissenting colleague states that it is not his position that the postelection conduct here alone might warrant setting aside the election, he nevertheless would reverse the Regional Director's rejection of the supplemental objections that raise the postelection conduct. He would do so because, in his view, the postelection threats, if proven, may aid in interpretation of the preelection threats. Events relevant to alleged objectionable conduct, however, need not themselves be asserted to be objectionable in order for evidence concerning them to be admitted in a hearing on objections. Thus, assuming arguendo that the alleged postelection threats would shed light on the alleged preelection threats (a position seemingly at odds with *Head Ski*, supra), it is not necessary to reverse the Regional Director's rejection of the supplemental objections in order for evidence concerning the alleged postelection threats to be introduced at the hearing.

ORDER

The Employer's request for review is denied.

MEMBER OVIATT, dissenting.

After an election on March 2, 1990, which the Union won, the Employer filed timely objections. Among other things, the objections alleged that, prior to the election, the Union and its agents threatened certain new employees with job loss if they voted ''no'' in the election, and that after the election the Union's agents engaged in surveillance and harassment of these employees to prevent them from complaining to management about election misconduct. The Regional Director ordered a hearing for the purpose of taking testimony on the objections.

On March 30, 1990, after expiration of the period for filing objections to the election, the Employer filed ''Supplemental Objections,'' alleging, among other things, that some of the same employees who had been threatened by union agents before the election continued to receive threats from the Union after the election, this time with the purpose of intimidating the employees into not testifying at the hearing on objections.[1] The Employer also stated that it did not become aware of these postelection threats until after the time for filing objections to the election had expired. The Regional Director rejected the objections as untimely under Section 102.69(a) of the Board's Rules and Regulations, and the Employer requested review.

The Regional Director did not challenge the Employer's assertion that it did not learn of the alleged postelection threats that were the basis of the ''Supplemental Objections'' until after the period under Section 102.69(a) for filing objections to preelection conduct had expired. Indeed, the ongoing nature of the alleged postelection threats suggests that at least some of the threats may not have occurred until after the time for filing objections under Section 102.69(a) had passed. Thus, we must assume that the Employer filed its ''Supplemental Objections'' at the earliest possible time.[2]

While there is nothing in the Board's Rules that specifically authorizes the filing of objections to postelection union conduct, neither is there anything in the Rules that prohibits it. (The Rule relied on by the Regional Director obviously relates only to the timeliness of objections to preelection conduct.) The alleged postelection conduct, if proven, might bear on the weight to be given to the testimony of the Employer's witnesses at the hearing on objections. It also might warrant the Board's withholding the Petitioner's certification, even if the objections to the preelection conduct are overruled. In these circumstances, I see no reason to foreclose full consideration of the ''Supplemental Objections'' at the hearing. Indeed, even the Regional Director acknowledged that the question of postelection threats could arise on cross-examination of the witnesses at the hearing.[3] This being so, the Regional Director's application of the Board's Rules to dismiss the Employer's objections, and thus to preclude thorough consideration of the issue at the hearing and by the Board, constitutes a much too constrained reading of the Board's Rules. Compare *White Plains Lincoln Mercury*, 288 NLRB 1133 (1988).[4] Accordingly, I would grant review of the Regional Director's rejection of the Employer's supplemental objections and direct that the supplemental objections be heard at the same time as the Employer's objections.

[1] The Employer also alleged that affidavits from four employees concerning the preelection threats, that were given to the Board's Regional Office, had been released by the Board to the Union.

[2] Compare *Holiday Inn Palo Alto-Stanford*, 298 NLRB 521 (1990).

[3] The Regional Director also suggested that the Employer could file unfair labor practice charges on the basis of the alleged union threats. (No such charges are now pending.) The difficulty with this approach is that, in this case, it is wasteful of the Board's scarce resources and of the parties' time. The charges would first have to be investigated by the Region and, if the Regional Director believed they had merit, the Region would then issue a complaint. Only then would the charges be consolidated with objections for hearing before a judge and a hearing scheduled at some later time. Here, the Employer has chosen to raise the postelection threat issue as an objection so that it can be considered along with similar objections at a hearing that the Regional Director has already ordered. Because the focus of the ''supplemental objections'' is the intimidation of witnesses who may appear at the hearing on objections, the supplemental objections can easily be added to those to be considered at the hearing.

[4] The majority takes issue with what it characterizes as my ''apparent view'' that the postelection conduct here alone may warrant setting aside the election. That is not my position. In this case, the postelection threats allegedly involve a continuing course of threats, extending back before the election. In my view, the postelection threats, if proven, may aid in interpretation of the preelection threats. Because timely objections were filed as to the preelection threats, the two should be considered together. *Head Ski Co.*, 192 NLRB 217, 218 (1971), relied on by the majority, is distinguishable. In *Head*, unlike here, there was no allegation that the postelection threats were made to discourage employees from testifying at the hearing on the preelection objections. This allegation serves to tie together the preelection and postelection threats in this case in a way not present in *Head*. In addition, even though these allegations immediately involve events that occurred after the election and could not themselves affect it, the alleged incidents if proved could warrant a denial or revocation of certification. These serious allegations deserve a full airing at the objections hearing.